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## INTRODUCTION

Military status imposes on soldiers certain responsibilities which have no immediate counterparts in the civilian employment community. The first area in which these responsibilities come into play concerns the soldier's handling of government property. The second area concerns the soldier's responsibility to remain physically fit to perform military duties. A violation of the responsibility of properly handling government property may result in the soldier having to compensate the government for a portion or all of any loss or damage. A violation of the responsibility to remain fit for military duties may result in the soldier's being denied certain benefits to which he would normally be entitled in cases of physical incapacitation or disability. Note that these responsibilities relating to the handling of government property are also applicable to civilian employees of the Department of the Army.

This programmed instructional text has been developed to introduce you to these two areas. Part I of the programmed text covers accounting for government property -- primarily the report of survey system. Part II pertains to the Army's line of duty system, which is utilized to determine a soldier's eligibility for benefits in cases of physical incapacitation or disability.

This text will teach you by supplying small bits of information and then requiring you to provide responses to questions. You should answer each question and then check it against the given answer. If your answer to a question is incorrect, restudy the material until you understand the correct answer. Answering the questions is important as it reinforces your understanding of the material. At the conclusion of each part of the text is a review problem which highlights the major points covered in that portion of the text.

This text is designed to introduce the reader to the above subject areas. Every effort has been made to explain the language of an Army regulation, statute or other reference source in a manner that is understandable to the inexperienced reader. Therefore, in solving actual questions and problems, the reader should refer not only to this text, but also to the applicable Army regulation, or statute since the answer may involve precise interpretation of the exact wording of the Army regulation or other

primary source. Also, changes may have occurred in the reference materials.

The words "he" and "his" when used in this publication represent both the masculine and feminine genders unless otherwise specifically stated.

REPORTS OF SURVEY AND  
LINE OF DUTY DETERMINATIONS  
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PART I  
ACCOUNTING FOR GOVERNMENT PROPERTY AND THE  
REPORT OF SURVEY SYSTEM

Part I of this programmed text deals with the procedures by which an Army member or civilian employee may be held financially liable for lost, damaged, or destroyed government property. This portion of the programmed text has three functions:

1. To summarize significant information contained in Army Regulation (AR) 735-5;
2. To highlight information contained in certain other Army publications and statutes; and
3. To acquaint Army judge advocates with the various roles they can expect to play with regard to these procedures concerning financial liability.

After completing Part I of this text you will be able to:

1. Identify the primary Army regulation provisions governing financial liability for lost or damaged government property;
2. List the procedures for determining financial liability for lost or damaged government property;
3. State the standards for determining financial liability;
4. Explain the consequences of a finding of financial liability and the types of relief available; and
5. Review actions recommending financial liability for lost or damaged government property.

#### REFERENCES:

1. Unit Supply UPDATE (Issue No. 13, 31 January 1992), containing AR 735-5, Policies and Procedures for Property Accountability, 31 January 1992.
2. FM 10-14-3, Surveying Officer's Guide, 30 December 1981 (a good source listing more applicable references is the Appendix in FM 10-14-3).
3. King, Reports of Survey: A Practitioner's Guide, The Army Lawyer, June 1984 at 1.
4. King, Recent Report of Survey Developments, The Army Lawyer, July 1985 at 11.

## SECTION A. INTRODUCTION

There is a vast amount of government property within the Army's supply channels under the control of or in the possession of military members and civilian employees of the Army. The importance -- and difficulties -- of accounting for this property cannot be overemphasized.

The accountability problems can be put in perspective by a 1977 report of the Inspector General, who conducted a survey of Army installations and divisions. The report concluded that accountability had been lost for about one percent of the property of the units inspected. Extrapolating these figures to the entire active Army, the IG computed the loss statistically to amount to approximately \$118.5 million!

Both supply personnel and JAGC officers alike must be familiar with property accountability policies and procedures. A primary reference in this area is AR 735-5.

The main purpose of AR 735-5 is to establish the accounting procedures to be used when Army property is lost, damaged, destroyed, or otherwise rendered unserviceable through causes other than fair wear and tear. AR 735-5 provides the procedures whereby Army commanders and supply personnel can document in supply records when property is no longer available for use. Also, AR 735-5 provides authorized methods by which responsible persons may be relieved from responsibility for lost, damaged, or destroyed property. Thirdly, AR 735-5 sets forth Army policy on financial liability.

Members and employees of the Army are not absolute insurers of the condition of government property entrusted to their care. Instead, their liability for loss of or damage to government property is derived from their negligent or otherwise wrongful conduct pertaining to its use or custody. The principal means for making administrative determinations as to whether such conduct has resulted in the loss of or damage to government property and whether the individual concerned will be held financially liable is the "report of survey" system.



Keep in mind, though, that first and foremost, AR 7355 sets forth supply and accountability procedures to enable Army personnel to balance the Army's books.

Although the JAGC officer's involvement is most often concerned with this third aspect of financial liability, it is important to keep a proper perspective on the primary purposes of AR 735-5.

ANSWER THE FOLLOWING QUESTIONS:

1. [True-False] CW2 True Count, a property book officer, discovers that a jeep he is accountable for was lost in a recent field problem. He should follow the procedures in AR 735-5 to document in his records that the jeep is no longer actually present.

2. [True-False] A soldier is absolutely liable for loss of or damage to government property under his control or in his possession. Explain your answer.

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[ANSWERS ON THE FOLLOWING PAGE]

ANSWERS:

1. True. AR 735-5 prescribes the accounting procedures to be used when DA property is lost, damaged or destroyed.
2. False. Liability for loss of or damage to government property is based on negligence or willful misconduct.

\* \* \* \* \*

Army policy is that some person must be responsible at all times for the care and safekeeping of Army property. This responsibility may be based on possession of the property or the scope of the person's duty.

When Army property is lost, damaged or destroyed by causes other than fair wear and tear, there are a number of procedures available to obtain relief from property responsibility. The procedure used in a particular case will depend on the circumstances surrounding the loss or damage and the type of property involved. These procedures include:

1. Statement of Charges;
2. Cash Collection Voucher;
3. Report of Survey; and
4. Administrative investigation under AR 15-6.
5. Collateral investigations and reports used for aircraft accidents.
6. Adjustment by unit commanders for losses of durable handtools up to \$100 per incident, if no negligence is involved.
7. Abandonment order.

ANSWER THE FOLLOWING QUESTION:

Responsibility for the care and safekeeping of Army property may be based on (a) \_\_\_\_\_ of the property or the (b) \_\_\_\_\_.

[ANSWERS ON THE FOLLOWING PAGE]

ANSWERS:       (a) possession  
              (b) scope of the person's duty

\* \* \* \* \*

Let's look a little more closely at each of the listed procedures.

If a commissioned officer, warrant officer, enlisted soldier, or civilian employee loses or damages government property and his unit commander or supervisor believes that the loss or damage was a result of that individual's neglect or misconduct, the unit commander or supervisor may prepare a statement of charges (DD Form 362) and submit it to the individual. Also, any individual who is responsible for property which is lost, damaged, or destroyed because of fault or negligence may prepare a statement of charges listing the names of the persons concerned. A statement of charges is used if liability is admitted and the charge does not exceed the monthly basic pay of the person being charged. By signing a statement of charges, the individual authorizes the collection of the amount of the charge from his pay. Appendix A contains an example of a properly prepared statement of charges.

In addition to the statement of charges, any individual--officer, enlisted, or civilian--may voluntarily admit liability for lost or damaged government property and offer to pay the value of the loss or damage in cash. In such cases, record of the payment is made on a cash collection voucher (DD Form 1131). It differs from a statement of charges, which is a payroll deduction, in that a cash collection voucher is an immediate cash settlement. An example of a properly prepared cash collection voucher is contained in Appendix B.

For both a statement of charges and a cash collection voucher, the amount of liability is the fair market value of the item (up to one month's basic pay). If the fair market value cannot be determined, then depreciation is allowed, based on the current price. The methods of determining depreciation are explained in AR 735-5, Appendix B.

Restrictions on the use of a statement of charges and cash collection voucher include:

a. They cannot be used when sensitive items (e.g., narcotics, small arms, demolition material, etc.) are lost or destroyed, nor any other time the use of a report of survey is mandatory (explained shortly).

b. Neither procedure can be used as a means to obtain items from the Government by merely acknowledging liability and reimbursing the Army. With both procedures the individual must acknowledge that he will turn in all articles later recovered and that he understands that the Government will retain title to the articles listed on the form.

c. They cannot be used for losses or damages exceeding one month's basic pay of the individual causing the loss or damage.

d. No individual can be forced to use these procedures, but use of a report of survey is mandatory when they are declined.

ANSWER THE FOLLOWING QUESTIONS:

1. A statement of charges may not be utilized if the case involves (a) \_\_\_\_\_ or if the value of the lost or damaged property exceeds (b) \_\_\_\_\_.

2. [True-False] Neither a statement of charges nor a cash collection voucher may be used when a soldier objects to the imposition of the charge.

[ANSWERS ON THE FOLLOWING PAGE]

ANSWERS:

1. (a) sensitive items  
(b) one month's basic pay of the individual
2. True. A statement of charges and a cash collection voucher may be used only when the individual voluntarily consents to their use.

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Reports of survey are not required for property lost, damaged, or destroyed due to an aircraft accident which is being investigated under the provision of AR 385-40. The collateral investigation may be used to adjust property records. This avoids the problem of having two separate investigations.

Losses involving handtools have always been a problem. In an effort to give commanders more flexibility, unit level commanders are permitted to adjust losses of durable handtools up to \$100 per incident if no negligence or misconduct is involved. Rules for the loss of organizational clothing may be found in AR 735-5, para. 14-4.

An abandonment order may be used when property is required to be abandoned in the course of combat, large scale field maneuvers involving simulated combat conditions, military advisor activities, or to meet other military requirements. If the abandonment is approved by proper authority, normally the installation or division commander, the abandonment order and authorization may be used to adjust the property accountability record.

\* \* \* \* \*

An investigation conducted according to AR 15-6 may be used instead of a report of survey. The difference between a report of survey and an AR 15-6 investigation is one of form rather than substance. All the rights available with a report of survey are applicable to an AR 15-6 investigation. When used, the AR 15-6 report of investigation is processed through the chain of command like the report of survey (see § B, *infra*).

A report of survey is an instrument for recording the circumstances concerning the loss, damage or destruction of Army property. It serves as, or supports, a voucher for dropping the articles from

the property records on which they are listed. It also serves to determine questions of responsibility (financial or otherwise) for the absence or condition of the articles. Appendix C contains a completed report of survey form. Take a few minutes to familiarize yourself with the report of survey form (DA Form 4697).

One of the two - a report of survey or an AR 15-6 investigation - must be prepared when:

a. A sensitive item is lost or destroyed. Note that a report of survey or AR 15-6 investigation is not mandatory for damaged sensitive items.

b. Directed by higher authority.

c. Property loss is disclosed as a result of a change of accountable officer's inventory (explained shortly).

d. Damages or shortages in occupied government quarters (real property and furnishings combined) or government furnishings in non-government quarters exceeds the responsible person's monthly basic pay.

e. An individual admits liability, and the loss, damage, or destruction exceeds the individual's monthly basic pay.

f. An individual refuses to admit liability by signing a statement of charges or a cash collection voucher, or where authorized, replacing the item in-kind.

g. The total handling loss of a specific bulk petroleum product is above the allowable loss for that product, and the dollar value of the total loss is greater than \$500.00.

ANSWER THE FOLLOWING QUESTION:

Captain Jones admits liability and agrees to pay for the damage to government furnishings in non-government quarters he occupied. The amount of damage is \$300. A report of survey (is) (is not) required. Explain your answer:

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\_\_\_ [ANSWER ON THE FOLLOWING PAGE]



ANSWER: is not. Since Captain Jones is willing to admit liability, he may voluntarily pay since the damage to government furnishings in non-government quarters does not exceed his monthly basic pay.

\* \* \* \* \*

Recall earlier that the term "accountable officer" was used. The accountable officer is the person officially designated to maintain a formal set of accounting records of property or funds. The accountable officer may or may not have physical possession of the property or funds. Included in this definition are property book officers. Hand-receipt holders are not included. One important ramification of being an accountable officer is that in the event of loss or damage to Army property, an accountable officer is liable for the full amount of the loss or damage, whereas normally a limitation of one month's basic pay applies (more on this later, in § C).

A frequently asked question is whether a company commander is an accountable officer. In DAJA-AL 1980/2722, TJAG opined that a commander does not become an accountable officer within the meaning of AR 735-5 solely by virtue of his assignment as a commander. The opinion points out, however, that the nature of local circumstances and procedures may result in the commander's becoming an accountable officer, if a special relationship between the commander and the property were established.

Note that in a "typical Army division" a company commander will "sign" for the property in his unit, but the company commander is a hand-receipt holder. In contrast, the property book officer often will be a warrant officer assigned to Division Support Command (DISCOM) and he will maintain the property books for one brigade and for one or more battalions in the division.

The issue raises the distinction between the concepts of responsibility and accountability. These concepts are explained in detail in AR 735-5. Quite simply, accountability is the obligation of a person to keep an accurate record of property, documents, or funds. It is imposed by law, lawful order, or regulation. Accountability is primarily concerned with keeping records. On the other hand, responsibility is the obligation of an individual for the proper custody, care, use, and safekeeping of government property. Any person may incur responsibility for the care and custody of government

property, even if he has not signed a receipt for it. This responsibility may be based on possession of the property or the scope of the person's employment or duty. In short, accountability involves the basic obligation of accounting for property, whereas responsibility arises from possession of property or from the obligation of command or supervision of others who are in possession of property.

An individual may have both accountability and responsibility, or may have accountability without responsibility or vice versa. For example, an accountable officer who has issued property on a hand-receipt has accountability without responsibility. The individual so receiving the property has responsibility without accountability.

And although DAJA-AL 1980/2722 (discussed above) holds that a commander does not become an accountable officer solely by virtue of his assignment as a commander, a company commander is, by virtue of his assignment, responsible for all the property of the company, regardless of whether or not he has signed receipts for such property.

Understanding the difference between accountability and responsibility is necessary to properly apply the principles of AR 735-5.

ANSWER THE FOLLOWING QUESTION:

[True-False] CPT Shortage, outgoing company commander and CPT Incoming, his replacement, conduct a joint change of command inventory of the company property. Five bed sheets are missing. A report of survey is mandatory, since property loss is disclosed as a result of a change of accountable officer's inventory.

[ANSWER ON THE FOLLOWING PAGE]

ANSWER: False. A company commander is not necessarily an accountable officer.

\* \* \* \* \*

At this point, another term should be explained since it will be used throughout the text.

The term "financial liability" refers to the personal, joint, or statutory obligation to reimburse the U.S. Government for government property which has been lost, damaged, or destroyed because of negligence or misconduct. In other words, financial liability is a debt owed to the U.S. Government for the loss, damage, or destruction of U.S. Government property.

Keep in mind that the report of survey system is separate from the disciplinary measures available to the commander. The report of survey is not a form of punishment, nor has it been proven to be effective as a deterrent. Instead, the commander has a number of disciplinary and administrative measures to enforce supply discipline and reduce the incidence of lost, damaged or destroyed government property. These measures range from an oral reprimand, or "chewing out," to an Article 15 or court-martial under the Uniform Code of Military Justice. Again, the key is that the report of survey is a supply-oriented document; it is not intended to be used as corrective action or punishment for negligence or misconduct that may have contributed to the loss.

ANSWER THE FOLLOWING QUESTION:

[True-False] After a soldier has been held not financially liable on a report of survey, a commander may take action against a soldier under Article 15 for the same incident.

[ANSWER ON THE FOLLOWING PAGE]

ANSWER: True. For example, disciplinary action may be taken for misconduct that was not the direct cause of the loss. Or, as a result of command inspection, it may be discovered that a supply sergeant's stocks are \$10,000 short. Disciplinary action may be appropriate against not only the supply sergeant, but also supervisors and commanders in the chain of command if investigation revealed inadequate command supervision (i.e., required inventories had never been made or verified).

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In short, a report of survey is a supply or accounting instrument used by the Army to record the circumstances covering the loss, damage, or destruction of government property.

A final introductory word -- you should be asking yourself at this point -- what authority allows the Army to operate the report of survey system, particularly since those employees held financially liable may lose a month's basic pay or more? The answer is in the following statutes:

10 U.S.C. § 4835, Reports of survey.

(a) Under such regulations as the Secretary of the Army may prescribe, any officer of the Army designated by him may act upon reports of survey and vouchers pertaining to loss, spoilage, unserviceability, unsuitability or destruction of or damage to property of the United States under the control of the Department of the Army.

(b) Action taken under subsection (a) is final, except that action holding a person financially liable for loss, spoilage, destruction, or damage is not final until approved by the Secretary or an officer of the Army designated by him.

10 U.S.C. § 4832, Property accountability: regulations.

The Secretary of the Army may prescribe regulations for the accounting for Army property and the fixing of responsibility for that property.

ANSWER THE FOLLOWING QUESTION:

[True-False] A statutory basis exists for the Army's report of survey system.

[ANSWER ON THE FOLLOWING PAGE]

ANSWER: True.

\* \* \* \* \*

## SECTION B. REPORT OF SURVEY SYSTEM

This section summarizes how the report of survey system operates and is designed to provide an "overview" of the process.

A report of survey is normally initiated by the primary hand-receipt holder, or the individual accountable for the property. When the hand receipt holder or accountable officer is not available, the person with the most knowledge of the incident will serve as the initiator. She prepares a brief statement (entered in block 11 of DA Form 4697) describing the loss or damage and explaining how it occurred. This statement is used by the approving authority to determine whether he needs to appoint a surveying officer, assess financial liability without an investigation, or grant relief from responsibility without taking additional action.

As discussed on page 8, a report of survey or AR 15-6 investigation is mandatory in seven instances.

The initiator of the report of survey forwards it to the approving authority. Regardless of who initiates the report of survey, it will be processed through the chain of command of the individual responsible for the property at the time the incident occurred during the loss. The accountable officer retains one copy to temporarily support the entries in his property book or other property record. The approving authority, a lieutenant colonel in command who will usually be the battalion commander, reviews the report of survey to determine the proper action to be taken. (NOTE: Approving authority can be retained at the Colonel level or higher and a lieutenant colonel or GS/GM-13 can be designated appointing authority. Appointing authorities, among other duties, appoint report of survey investigating officers; however, they do not approve completed report of survey investigations.) The approving authority may decide there is enough information in block 11 to make a decision without further investigation. This is known as a "short survey." If the approving authority decides there is insufficient evidence of negligence and that no individual should be held liable for the loss, he may

order relief from accountability and responsibility. If he decides there is sufficient evidence to hold an individual financially liable for the loss or damage, he may compute the charge and notify the individual of the charge and any appeal rights. Or he may return the report of survey to the person who initiated it, if the evidence presented is conflicting or not complete enough for a clear understanding of the circumstances. Another option available to the approving authority is to appoint a surveying officer (or an investigating officer under AR 15-6).

Although normally approving authority appointment of a surveying officer is optional, a surveying officer must be appointed if:

(1) A person concerned should be charged with responsibility for the loss or damage.

(2) The report of survey has been directed by higher authority.

(3) Stockage is lost at certain storage depots.

As noted above, the approving authority may recommend liability without appointing a surveying officer if the evidence reflected on the report of survey, DA Form 4697, clearly establishes negligence. This allows the commander to shorten the process by eliminating the surveying officer. It does not eliminate any rights for the individual for whom liability is recommended.

ANSWER THE FOLLOWING QUESTIONS:

1. [True-False]. Under certain circumstances, the appointment of a surveying officer by the approving authority is mandatory.

2. The approving authority is normally a \_\_\_\_\_ Commander.

[ANSWERS ON THE FOLLOWING PAGE]

ANSWERS:

1. True. The approving authority must appoint a surveying officer in three specific instances.
2. Battalion

\* \* \* \* \*

The surveying officer is normally a commissioned officer or senior noncommissioned officer (AR 735-5, para. 13-28, provides the qualifications of a surveying officer). The surveying officer will be senior to the person subject to financial liability except when impractical because of military exigencies. He investigates to determine the facts surrounding the loss or damage of Army property and then submits findings as to how the loss or damage occurred and whether fault or negligence was involved. If the survey officer discovers that the investigation requires examining the conduct of a person senior to him, the survey officer will notify the approving authority. The approving authority will appoint a new survey officer or direct the investigation to continue if the change is impractical. Whenever the approving authority does not appoint a senior survey officer he must document that decision as an exhibit to the survey. The survey officer also makes recommendations, based on his findings and the policies set forth in AR 735-5. The investigation will be his primary duty.

If the surveying officer recommends an individual be held financially liable, the surveying officer must give the individual seven calendar days to examine the report of investigation before the surveying officer submits it to the approving authority. If the individual is not readily available, the surveying officer must mail to the individual a copy of the findings, recommendations, and evidence for examination and comment. It must be mailed certified or registered mail. Before taking further action the surveying officer must wait 15 calendar days for a reply if the individual is in the same country as the survey officer. If the individual and survey officer are in different countries allow 30 calendar days. The surveying officer must fully consider and attach any statement submitted by the individual. The individual may submit new or added evidence in his defense. The evidence must be considered by the surveying officer as if it had been available earlier. The surveying officer then notes that the added evidence has been



considered and, if he wishes to modify his original recommendations, the surveying officer will make amended recommendations. For reports of survey involving damage to government housing, furnishings or equipment associated with government housing, the surveying officer must explain whether a finding of gross negligence has been made. If such a finding is made, the surveying officer must inform the soldier that he can be held liable for the full amount of damage. In such cases, the surveying officer must also inform the soldier of his right to request that the approving authority waive in whole or in part the claim for damage under Section 2775 of Title 10, United States Code. An example of the notification memorandum may be found at AR 735-5, Figure 13-12.

The surveying officer has 30 days to act. This period may be extended if further investigation is required or if the surveying officer is waiting for a reply from a soldier for whom financial liability is recommended.

Immediately upon determining that an individual will be held liable, the surveying officer will inform the soldier's Commander. If the soldier is being separated or transferred, an appropriate statement concerning the report of survey will be placed on the clearance document to alert clearance personnel of the possibility of a collection action.

ANSWER THE FOLLOWING QUESTION:

[True-False] A surveying officer submits both findings and recommendations to the approving authority.

[ANSWER ON THE FOLLOWING PAGE]

ANSWER: True.

\* \* \* \* \*

The surveying officer then returns the report of survey to the approving authority, who reviews it. The approving authority may disagree with the surveying officer's recommendations. If she disagrees with the surveying officer, she must enter a statement in item 34 on the report of survey form justifying the rationale upon which the decision was based. If financial liability is the new recommendation, like the surveying officer, the approving authority must allow the individual the opportunity to respond (as explained above). Of course the approving authority may adopt the surveying officer's recommendations as her own or return the report of survey to the surveying officer if further investigation is required. The approving authority reviews the report of survey to ensure that it is accurate and complete and takes final action "by authority of the Secretary of the Army."

Where financial liability is recommended, a JAGC officer (or civilian attorney) must review the findings and opine as to the adequacy of the evidence and the propriety of the findings and recommendations. This review must occur before the approving authority's action. Note that the approving authority has considerable latitude in processing the report of survey. Note too that the approving authority may approve a financial charge even if the surveying officer and reviewing judge advocate have recommended against assessing financial liability. Of course, the approving authority's action must be based upon the available evidence.

ANSWER THE FOLLOWING QUESTIONS:

1. If the approving authority makes a finding of financial liability, contrary to the recommendation of the surveying officer or reviewing judge advocate, what steps must he take to protect the rights of the individual concerned? Explain your answer:

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[ANSWERS ON THE FOLLOWING PAGE]

ANSWERS:

1. If the approving authority makes a finding of financial liability, he must notify the individual concerned and allow him or her the opportunity to examine the report of investigation. The approving authority must fully consider any response and attach it to the report of survey. If new or added evidence is submitted, and the approving authority still recommends financial liability, the approving authority will note that the added evidence has been considered (i.e., the approving authority takes the same action the surveying officer would have taken if the surveying officer had originally made a recommendation of financial liability). The approving authority must also reduce to writing his rationale for assessing financial liability contrary to the recommendations.

\* \* \* \* \*

The approving authority must notify individuals being held financially liable on reports of survey of that fact. A sample notification memorandum may be found at AR 735-5, Figure 13-13. The purpose of this notice is to ensure that the person concerned is aware of his rights at this point. If the person being held liable is available, he signs and dates a copy of this notice letter, acknowledging receipt. The date of receipt starts the running of the 30 day period within which a request for reconsideration must be filed (unless good cause exists for greater delay). One copy of the report of survey (for active Army personnel) is then sent to the finance and accounting officer for collection action; another copy goes to the accountable officer to support his records (more on the Army's ability to collect in § F, *infra*).

If the approving authority determines that an individual for whom financial liability has been recommended by the surveying officer will not be held liable, he must notify the individual. Notification may be made by telephone or in person. If the individual is not readily available, a certified letter will be used.

Finally, the individual may request reconsideration of the report of survey or (for enlisted personnel only) submit a petition for remission or cancellation of the debt. These procedures are explained in more detail in § E, *infra*.

AR 735-5 states that under normal circumstances,

the total processing time will be no longer than 75 calendar days. Failure to comply with this processing time requirement, however, does not invalidate the report of survey or provide the person held liable a basis for relief.

As noted above, the individual concerned is notified of the report of survey and is afforded the opportunity to respond during the investigation, and afterwards, the individual may submit a request for reconsideration.

ANSWER THE FOLLOWING QUESTION:

The (a)\_\_\_\_\_ takes final action on a report of survey "by authority of the (b)\_\_\_\_\_."

[ANSWERS ON THE FOLLOWING PAGE]

ANSWERS: (a) approving  
authority  
(b) Secretary  
of the Army

\* \* \* \* \*

#### SECTION C. STANDARDS FOR DETERMINING FINANCIAL LIABILITY

The basic guideline is set forth in AR 735-5 -- financial liability will result when a person's negligence or willful misconduct toward government property is the proximate cause of any loss, damage, or destruction of such property. The standard, then, is simple negligence, since under the report of survey system, negligence is defined as an act or omission that a reasonable person would not commit under similar circumstances. Willful misconduct means any intentionally wrongful or unlawful act dealing with the property concerned. Note that misconduct includes wrongful appropriation.

In each case, however, proximate cause must exist, which is defined as the cause that, in a natural and continuous sequence, unbroken by a new cause, produces the loss or damage, and without which the loss or damage would not have occurred. It is further defined as the primary moving cause, or predominating cause, from which the injury follows as a natural, direct, and immediate consequence, and without which it would not have occurred. As one might expect, the concept of proximate cause is not always clearly understood by surveying officers (and others), and a JAGC officer often will be required to explain or interpret proximate cause in light of a particular fact situation.

ANSWER THE FOLLOWING QUESTIONS:

1. Financial liability will result when a person's negligence or (a) \_\_\_\_\_ toward government property is the (b) \_\_\_\_\_ of any loss, damage, or destruction of such property.

[ANSWERS ON THE FOLLOWING PAGE]

ANSWERS:

1. (a) willful misconduct  
(b) proximate cause

\* \* \* \* \*

This definition of proximate cause does not foreclose application of general legal principles about proximate cause. Resort to general legal principles and recognized authorities such as the Restatement (2d) Torts is appropriate. For example, report of survey problems involving whether an intervening force is a superseding cause raise considerations such as the fact that the intervention brought about a different kind of harm from that which otherwise would have resulted from the actor's negligence, the fact that the consequences of an intervening force appear to be extraordinary, or the fact the intervening force operated independently of any situation created by the actor's negligence, etc. The point is that examining a source such as the Restatement (2d) Torts is invaluable in appropriate cases. When applicable, these principles may be used to determine whether negligence or willful misconduct is the proximate cause of a loss for purposes of AR 735-5.

ANSWER THE FOLLOWING QUESTION:

[True-False] The definition of proximate cause in AR 735-5 precludes application of general legal principles about proximate cause.

[ANSWER ON THE FOLLOWING PAGE]

ANSWER: False.

\* \* \* \* \*

AR 735-5, Appendix C, sets forth certain principles or factors which help in deciding whether to impose financial liability. These factors are helpful in solving actual problems you may encounter. For example, the relationship of the person to the property is to be considered in determining whether an act or omission constitutes negligence.

In considering reports of survey, one usually thinks of a soldier wrecking a jeep, or a similar situation where Army property is physically damaged or destroyed. AR 735-5 makes it clear, however, that loss includes loss from government accountability. A person can be held financially liable under AR 735-5 for the loss of government property when the loss from government accountability is the proximate result of the person's negligent act or omission.

ANSWER THE FOLLOWING QUESTIONS:

1. The relationship of the individual to the property [does] [does not] determine the standard of negligence (i.e., gross or simple negligence) to be applied.
2. Staff Sergeant (SSG) Klink, a supply sergeant, issued 10 fans from his supply room, obtaining a handreceipt for only six of the fans. During a later inventory, the company commander asked SSG Klink to account for the fans. SSG Klink could account for only the six hand-receipted fans. An examination of the company area produced three of the four missing fans. Will SSG Klink most likely be held financially liable for any of the fans? Explain your answer:

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[ANSWERS ON THE FOLLOWING PAGE]

ANSWERS:

1. does not
2. SSG Klink will most likely be held liable for the loss of one fan. Loss includes loss from government accountability. Unless unusual circumstances were present, SSG Klink was negligent in not utilizing a hand-receipt to maintain accountability for each fan, and the loss of accountability was the proximate result of his negligence. SSG Klink will not be held liable for the remaining three fans, since they can now be accounted for as a result of the physical inventory.

\* \* \* \* \*

In addition to recommending financial liability, the surveying officer and approving authority must determine the financial charge, as follows:

(1) If the property is economically repairable, determine the cost of repairs.

(2) For irreparably damaged property, determine the value of the property immediately before the loss through appraisal and its fair market value after the loss (using a technical inspector).

(3) If the property is irreparably damaged and technical inspection is impossible, use a depreciation formula to determine the value of the property.

More detailed guidance is provided in AR 735-5, Appendix B, which should be consulted when computing the financial charge. For example, para. B-2c permits the use of an allowance for standard rebuild cost instead of depreciation in certain circumstances; para. B-2b provides that depreciation should be applied only when the fair market value or other methods of determining value cannot be used.

Quite simply, the financial charge is the cost of repairs or if the property is lost, destroyed, or irreparably damaged, the actual value of the item at the time of the loss. Once an individual is found to be financially liable for any loss of or damage to Army property, and the financial charge has been computed as explained briefly above, the next question is what amount he owes to the Government. Five general rules apply here.



First, accountable officers will be held financially liable to the Government for the full amount of loss (less depreciation) discovered upon change of accountable officers. Collection from an accountable officer is based on 37 U.S.C. § 1007(f), which mandates collection of the full amount.

Second, all soldiers, regardless of component, will be liable to the Government for the full amount of loss (less depreciation) in cases of lost, damaged, or destroyed personal arms and equipment. The terms "personal arms and equipment" are defined as items designed for personal use or performance of duty by a person and normally stored with the personal effects of, or worn or carried on, the person. Examples include handguns, flashlights, protective masks, and binoculars. Note that such items become personal equipment only when they are issued to the using person for personal use. Therefore items such as motor vehicles, office furniture, government furnishings, and typewriters are not classified as personal equipment. Collection is based on 37 U.S.C. § 1007(e), which requires that the full amount of the loss be collected.

ANSWER THE FOLLOWING QUESTIONS:

1. For destroyed government property, the financial charge is the \_\_\_\_\_ of the property at the time of the loss.
2. [True-False] Accountable officers will be held financially liable for the full amount (less depreciation) of loss.

[ANSWERS ON THE FOLLOWING PAGE]

ANSWERS: 1.actual value  
2. True.

\* \* \* \* \*

Third, any person found financially liable for loss of public funds will be charged for the full value of the loss (one exception is a loss investigated according to AR 37-103).

Fourth, financial liability of soldiers is limited to 1 month's basic pay or the amount of the loss to the Government (less depreciation), whichever is the lesser amount, for all property except as addressed above. Financial liability of civilian employees for losses to government property, including personal arms and equipment, is limited to 1 month's basic pay or the amount of the loss to the Government (less depreciation), whichever is the lesser amount. A civilian employee who is an accountable officer, however, may be held liable for more than 1 month's basic pay, as explained in the first rule above.

For soldiers, combined losses of personal arms and equipment and other equipment and property arising from a single incident may result in charges greater than 1 month's basic pay. The personal arms and equipment loss simply is added to either (1) the actual loss of other equipment and property, if that loss amounts to less than 1 month's basic pay, or to (2) 1 month's basic pay, if the other equipment and property loss is greater than 1 month's basic pay.

Finally, when the surveying officer finds that government quarters, furnishings, or equipment associated with government quarters were lost, damaged, or destroyed as a result of gross negligence or willful misconduct on the part of a soldier, their dependents, guests, or pets the full amount of the loss will be charged.

ANSWER THE FOLLOWING QUESTIONS:

1. Losses to personal arms and equipment (PA&E) -- soldiers:

BASIC PAY	ACTUAL
LOSS AMOUNT CHARGED	

Officer and	\$800	\$ 50
<hr/> Enlisted	\$800	\$900
<hr/>		

2. Losses to other equipment or property (OEP):

	BASIC PAY	ACTUAL LOSS
AMOUNT CHARGED		
All personnel	\$1,000	\$ 100
_____		
	\$1,000	\$15,000
_____		

3. Combined PA&E and OEP losses -- soldiers:

	BASIC PAY	ACTUAL OEP LOSS	ACTUAL PA&E LOSS	AMOUNT CHARGED
Officer and	\$1,000	\$ 500	\$200	
_____				
Enlisted	\$1,000	\$ 700	\$400	
_____				
	\$1,000	\$5,000	\$200	
_____				

4. Specialist (SPC) Speedy, the unit supply clerk, was required to transport 15 binoculars and protective masks to the field for use by other members of the unit in a field training exercise. On the way he negligently wrecked the jeep he was driving and the binoculars and protective masks were destroyed. The amount of the loss to the binoculars and protective masks exceeds his basic pay. Will SPC Speedy be held liable for the full amount of the loss? Explain your answer:

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[ANSWERS ON THE FOLLOWING PAGE]

ANSWERS:

1. Losses to personal arms and equipment (PA&E) -- soldiers:

	BASIC PAY	ACTUAL LOSS	AMOUNT CHARGED
Officer and	\$800	\$ 50	\$ 50
Enlisted	\$800	\$900	\$900

Note that for personal arms and equipment, the soldier will be held liable for the full amount of the loss, even if the loss exceeds 1 month's basic pay.

2. Losses to other equipment or property (OEP):

	BASIC PAY	ACTUAL LOSS	AMOUNT CHARGED
All personnel		\$1,000	\$ 100
100			\$
		\$1,000	\$15,000
\$1,000			

Note that the maximum liability is 1 month's basic pay.

3. Combined PA&E and OEP losses -- soldiers:

	BASIC PAY	ACTUAL OEP LOSS	ACTUAL PA&E LOSS	AMOUNT CHARGED
Officer and	\$1,000	\$ 500	\$200	\$ 700
Enlisted	\$1,000	\$ 700	\$400	\$1,100
	\$1,000	\$5,000	\$200	\$1,200

Applying the rules just explained, you should charge the soldier the full amount of the loss of personal arms and equipment and charge the loss of other equipment and property up to 1 month's basic pay; then add these two charges together for the total charge.

4. The binoculars and protective masks were not personal arms or equipment, since they were not designed for SPC Speedy's personal use or performance of duty. Instead, under the facts, he was merely transporting them to the field, so they could be used by other soldiers in the unit. Therefore, SPC Speedy's maximum liability is 1 month's basic pay.

\* \* \* \* \*

What happens if two or more persons are found liable for the lost, damaged, or destroyed property and liability has been determined to be joint and several? The next section explains this fairly common occurrence.

\* \* \* \* \*

#### SECTION D. JOINT AND SEVERAL LIABILITY

When two or more individuals are involved and liability is determined to be joint and several, the charges should be computed as follows:

(1) When the actual loss exceeds the combined monthly basic pay of each person being held liable, each individual should be charged the full amount of his basic pay. This rule does not apply, however, in those situations, described in § C, supra, where the 1 month's basic pay limitation does not apply (i.e., loss of personal arms or equipment, etc.).

(2) When the actual loss is less than the combined monthly basic pay of all persons being held liable, the charges should be apportioned in proportion to each person's basic pay. Use the following formula:

$$\frac{\text{Individual's basic pay}}{\text{Total basic pay}} \times \text{actual loss} = \text{individual's financial charge}$$

Consider the following example:

Actual loss = \$2,000  
Person A's basic pay = \$600  
Person B's basic pay = \$1,200  
Person C's basic pay = \$1,800

$$\text{Total basic pay} = \$600 + \$1,200 + \$1,800 = \$3,600$$

Person A's financial charge is computed as follows:

$$\frac{\$600}{\$3,600} \times \$2,000 = \$333$$

Person B's financial charge is computed as follows:

$$\frac{\$1,200}{\$3,600} \times \$2,000 = \$666$$

ANSWER THE FOLLOWING QUESTION:

Using the above example, compute C's financial charge.

[ANSWER ON THE FOLLOWING PAGE]



ANSWER:

Person C's financial charge:

\$1,800

\$3,600      x      \$2,000 = \$1,000

One method to check your figures when the actual loss is less than the combined monthly basic pay, is to add together each person's financial charge -- the sum should be the actual loss to the Government.

\* \* \* \* \*

#### SECTION E. RECONSIDERATION & REMISSION OF INDEBTEDNESS

Determinations of financial liability may be amended or reversed by several different procedures. First, any headquarters having previously acted on a report of survey may decide that it should be reopened, corrected, or amended, in which case a letter explaining the basis of the decision will be forwarded (through any intermediate headquarters) to the approving authority. Upon receipt of such a letter, the approving authority has several options available:

- (1) Deny the requested relief;
  - (2) Make minor corrections not involving important changes of findings or recommendations of the surveying officer;
  - (3) Amend the final action, with or without conducting a further investigation;
  - (4) If the property is recovered, reopen the survey and follow the procedures in AR 735-5, para. 1416.
- If the approving authority denies the request for reconsideration he will prepare and personally sign a memorandum setting forth the reasons for his denial.

Where the approving authority has taken final action, cancellation of a report of survey is prohibited.

Second, the individual being held liable may submit a request for reconsideration. A request for reconsideration is a request for relief based on the legal merits of the case. The reconsideration must

be submitted within 30 days of notification that the individual is being held liable. As discussed above, it is reviewed initially by the approving authority, who may grant the requested relief. If the request is denied in whole or in part by the approving authority, it is then forwarded to the appeal authority for action. In this case, the approving authority sends the appeal authority a memorandum setting forth the basis for denying the requested relief.

ANSWER THE FOLLOWING QUESTION:

A request for reconsideration is initially acted on  
by the \_\_\_\_\_.

[ANSWER ON THE FOLLOWING PAGE]

ANSWER: approving authority

\* \* \* \* \*

The appeal authority usually is the approving authority's next higher commander (or certain other individuals, as provided in AR 735-5, para. 13-52). The appeal authority takes final action on all appeals of reports of survey "by authority of the Secretary of the Army." An officer directly responsible or accountable for the property listed on the report of survey may not act as an appeal authority on that report of survey. Also, an officer who has acted as the approving authority may not also act as the appeal authority on that report of survey. When the appeal authority is disqualified from acting on a report of survey, the appeal will be forwarded to the next higher commander. The authority to act on appeals of reports of survey may be delegated, in certain instances, to an officer in the rank of Colonel or higher.

ANSWER THE FOLLOWING QUESTION:

The appeal authority on a report of survey usually is the \_\_\_\_\_.

[ANSWER ON THE FOLLOWING PAGE]

ANSWER: approving authority's next higher commander

\* \* \* \* \*

There are two procedures for seeking relief from financial liability established according to AR 735-5. The first is the reconsideration process, described above. Alternatively, a petition for remission (cancellation) of indebtedness may be submitted by enlisted members of the active Army or the ARNG. Note that this procedure is not available to officers, civilian employees, or former enlisted soldiers. A request for remission of indebtedness of a report of survey can only be based on extreme hardship. Requests based on injustice are not proper for consideration for remission. In such cases, a request for reconsideration must be made before a request for remission will be processed.

The Secretary of the Army may remit any part of an enlisted soldier's indebtedness remaining unpaid if the action is considered in the best interest of the Government. Authority to take final action on requests for remission of indebtedness is restricted to Headquarters, Department of the Army. While commanders below the Department of the Army level have no authority to remit an indebtedness, they are required to suspend collection of the debt pending a final decision on the request for remission.

Nothing in AR 735-5, however, is intended to prevent a soldier from seeking relief from the Army Board for Correction of Military Records under AR 15-185.

ANSWER THE FOLLOWING QUESTIONS:

1. A request for reconsideration is a request for relief based on the (a) \_\_\_\_\_, while a request for (b) \_\_\_\_\_, which is limited to (c) \_\_\_\_\_ members of the Army, is based on (d) \_\_\_\_\_.
2. [True-False] Commanders below the Department of the Army level must suspend collection when an enlisted soldier submits a request for remission of indebtedness.

[ANSWERS ON THE FOLLOWING PAGE]

ANSWERS:

1. (a) merits  
(b) remission of indebtedness  
(c) enlisted  
(d) extreme hardship
2. True. Collection action must be suspended until final action is taken by Headquarters, Department of the Army.

\* \* \* \* \*

One final note -- in advising soldiers or commanders concerning requests for remissions of indebtedness, you may well wish to consult these references:

(1) AR 600-4, Remission or Cancellation of Indebtedness for Enlisted Members, 1 December 1983 (this regulation provides guidance concerning submitting and processing such requests).

(2) 10 U.S.C. § 4837 (Settlement of accounts: remission or cancellation of indebtedness of enlisted members).

\* \* \* \* \*

SECTION F. COLLECTION FROM PAY

A person liable for damage or loss of Army property may always volunteer to pay the amount due. In some cases, the Army can also collect payment involuntarily. This right, however, to involuntarily attach or stop an individual's current pay does not follow automatically from the administrative determination of liability, but in each case must be specifically authorized by statute.

1. Enlisted Personnel. Under 37 U.S.C. § 1007(c), up to two-thirds of an Army or Air Force enlisted soldier's current pay may be deducted monthly to compensate for loss of or damage to government property. Similarly, if the member still owes money at the time of separation, his final pay and allowances may be attached, but the soldier's pay will not be reduced to less than one-third of his pay for that month. Consequently, if a full month's

basic pay or more is charged, collection must be over 2 or more months.

2. Officer Personnel. Until 1984, pay could be withheld from an officers pay only under certain circumstances. Officers and enlisted soldiers are now treated the same in regard to withholding.

ANSWER THE FOLLOWING QUESTION:

Compensation for lost or damaged government property may be involuntarily withheld from a soldier's

(a) \_\_\_\_\_ pay or (b) \_\_\_\_\_ pay.

[ANSWERS ON THE FOLLOWING  
PAGE]

ANSWERS:           (a) current (monthly)  
                     (b) final

\* \* \* \* \*

3. Civilians. There is statutory authority for withholding the current pay of a civilian employee without his written consent. AR 37-1, Chapter 15, provides an excellent summary of the procedures required before collection may be made from the civilian employee's current or final pay upon separation from employment and, if needed, from benefits accrued in the Civil Service Retirement Fund.

As a last resort, when no other method of collection is available, the Army may elect to attempt collection by requesting the Department of Justice to file suit (AR 27-40, Chapter 4).

Turn now to Appendix D, which summarizes the Army's authority to collect for damage to or loss of government property. Note that the only major problem area lies in the involuntary collection from the current pay of officers and civilian employees.

ANSWER THE FOLLOWING QUESTION:

Involuntary collection from current pay is available in all cases involving (a) \_\_\_\_\_ and  
(b) \_\_\_\_\_ personnel.

[ANSWERS ON THE FOLLOWING PAGE]



ANSWERS:(a) enlisted and officer  
(b) civilian

\* \* \* \* \*

#### SECTION G. ROLE OF THE MILITARY ATTORNEY

As a judge advocate, you may become involved with reports of survey and other accountability procedures pertaining to lost, damaged, or destroyed government property in several situations.

First, you may be called upon to advise a surveying or investigating officer prior to or during the report of survey or AR 15-6 investigation. When initially briefing a surveying officer on his duties, you may find FM 10-14-3, Surveying Officer's Guide, to be a good reference to recommend for his use. FM 10

14-3 introduces the surveying officer to his duties and explains the factors he should consider and principles he should follow when conducting his investigation. Using the FM allows the surveying officer to have a ready reference he can read at his convenience and saves time in your initial briefing of surveying officers. Be careful, FM 10-14-3 is getting outdated. AR 735-5, Appendix C, is another quick aid for surveying officers.

Second, you may be requested to advise an individual whose action is the subject of the investigation. AR 735-5 expressly provides a right to legal advice only upon a recommendation of financial liability by the surveying officer. In practice, however, legal advice is normally provided prior to an adverse determination. The advice may take the form of an interview in which you provide guidance to ensure that all pertinent facts are revealed and counseling as to how the facts should be presented in a statement the individual may wish to submit for the surveying officer's consideration. Additionally, the individual may have been read his Article 31 warnings (as discussed in § H, infra) and may have requested to see an attorney. In any event, be aware that AR 735-5 provides that the office of the staff judge advocate will provide legal advice when requested by civilian employees, as well as soldiers, against whom a charge is recommended.

ANSWER THE FOLLOWING QUESTIONS:

1. [True-False] It is proper for a JAG officer to advise a surveying officer before the surveying officer completes and submits his report of survey to the approving authority.

2. [True-False] A JAG officer may provide advice to both soldiers and civilian employees concerning reports of survey.

[ANSWERS ON THE FOLLOWING PAGE]

ANSWERS:

1. True.
2. True.

\* \* \* \* \*

Third, AR 735-5 requires a legal review in all cases in which financial liability is recommended. When performing the legal review, you review the findings and provide your opinion as to the adequacy of the evidence and propriety of the findings and recommendations. This legal review is required to be completed before the approving authority's action on the case. A copy of the legal review is included as part of the report of survey record.

Fourth, you may be made available to provide advice on requests for reconsideration and request for remission of indebtedness.

Finally, AR 735-5 requires a legal review before the appeal authority takes final action on a request for reconsideration. This review is similar to the legal review performed prior to the approving authority action described above.

Obviously the potential for conflict exists and you should carefully ensure that you do not improperly advise parties with adverse interests. AR 735-5 expressly prohibits the attorney reviewing a report of survey before the approving authority's action from reviewing the request for reconsideration on the same report of survey. You may advise a client on the report of survey and later on a reconsideration of that report of survey. You cannot, however, advise both the person who is the subject of a report of survey and either the surveying officer, approving authority or appeal authority of that same report of survey.

ANSWER THE FOLLOWING QUESTIONS:

1. [True-False] A legal review must be conducted when financial liability is recommended on a report of survey, before both the approving authority and appeal authority take their actions.
2. [True-False] The same judge advocate can perform both legal reviews described in question 1, as long

as he has not advised the individual being held financially liable.

[ANSWERS ON THE FOLLOWING PAGE]

ANSWERS:

1. True.

2. False. Having the same judge advocate perform the legal review before the approving authority acts and then again before the appeal authority acts may preclude the individual appealing the charge from receiving a truly independent review on reconsideration. AR 735-5 expressly prohibits this practice.

\* \* \* \* \*

SECTION H. APPLICATION OF ARTICLE 31, UCMJ

As mentioned earlier, reports of survey, statements of charges and similar procedures will not be used as disciplinary or punitive measures. The use of such procedures, however, does not preclude recourse to disciplinary measures when appropriate. In fact, it may well be that the evidence adduced by the surveying officer will warrant later disciplinary action. Thus, questions are likely to arise on the desirability and necessity of providing an individual his rights under Article 31, Uniform Code of Military Justice.

AR 735-5 does not address the issue of whether an Article 31 warning must be given and the consequence of not giving such a warning when one is required. The Judge Advocate General has concluded that statements taken in violation of Article 31 may be admitted into evidence in administrative proceedings (JAGA 1969/3370). Nevertheless, because incriminating admissions given without adequate warnings to surveying officers are generally inadmissible in trials by court martial, TJAG further concluded that surveying officers should be cautioned to advise a soldier of his rights under Article 31 anytime the surveying officer suspects him of having committed an offense punishable by court martial. Certainly, when in doubt, the safer practice is for a surveying officer to provide such warnings.

Therefore, as a minimum, all surveying officers should be advised of the possible application of

Article 31. This is particularly important when willful misconduct is suspected.

ANSWER THE FOLLOWING QUESTION:

[True-False] The surveying officer failed to read a soldier his rights under Article 31 even though the soldier was a suspect. The statement can be considered by the surveying officer and others in determining whether to hold the individual liable.

[ANSWER ON THE FOLLOWING PAGE]

ANSWER: True. There is no exclusionary rule under the report of survey system for failure to comply with Article 31.

\* \* \* \* \*

REVIEW PROBLEM:

On a Saturday evening, after visiting a number of establishments dispensing intoxicating beverages, Sergeant (SGT) Burns returned to his barracks room at Fort Blank to recuperate from his exploits of the evening. Deciding to have one more cigarette, SGT Burns sat down in the over-stuffed chair in the barracks room and "lit up." But the veil of weariness soon began to overtake SGT Burns and so, after placing the burning cigarette in a shallow ashtray sitting on the arm of the chair, he proceeded to his bed and soon fell fast asleep. Shortly after he fell asleep, SGT Burns was awakened by the smell of smoke coming from the chair. He poured a small quantity of water on the smoldering spot and went back to sleep. Several hours later, at approximately 0400, SGT Burns was again awakened by the smoking chair. He then poured some more water onto the chair and went back to sleep. At 0530, another occupant of the barracks noticed the smoldering chair in the latrine. Recognizing that it was from Burns' room, he awoke SGT Burns to tell him about the chair. SGT Burns said that he would take care of the chair, but he fell back asleep without checking on the chair. At 0900, another barracks occupant awoke to find his room full of smoke. After waking SGT Burns, he called the fire department. As a result of the fire, the chair, which was government issued and had a present value of \$60, was destroyed and the latrine window sash and frame were burned (\$50 replacement cost). In addition, there was smoke damage to the latrine and hallways (\$100 for repainting).

ANSWER THE FOLLOWING QUESTIONS:

1. In terms of the damage to the building, the standard for liability would be (a) \_\_\_\_\_ negligence or (b) \_\_\_\_\_.
2. A report of survey [would] [would not] be required if SGT Burns voluntarily agreed to pay for the amount of damage.

3. If a report of survey or AR 15-6 investigation  
were conducted, the approving authority would be the

\_\_\_\_\_.

[ANSWERS ON THE FOLLOWING PAGE]



REVIEW PROBLEM ANSWERS:

1. (a) simple  
(b) willful misconduct
2. would not. Since the total amount of damage does not exceed one month's basic pay, under these circumstances a report of survey is not required.
3. battalion commander

## PART II. LINE OF DUTY DETERMINATIONS

This portion of the programmed text deals with the Army's Line of Duty system. Part II has two functions:

1. To highlight significant information contained in Army Regulation 600-8-1, Army Casualty and Memorial Affairs and Line of Duty Investigations (18 September 1986); and

2. To introduce Army judge advocates with various roles they may expect to play in the Line of Duty investigation system.

At the conclusion of Part II of this text you will be able to:

1. Identify the possible Line of Duty determinations;

2. Identify the legal requirements for the different Line of Duty determinations;

3. Advise Army members of (a) their rights in a Line of Duty investigation and (b) the consequences of an adverse determination; and

4. Review completed Line of Duty actions for legal sufficiency.

## REFERENCES:

The major reference source on the Line of Duty system is Army Regulation 600-8-1, Army Casualty and Memorial Affairs and Line of Duty Investigations (18 September 1986). The emphasis in this programmed text is on the legal, rather than on the administrative and processing, aspects of line of duty cases.

## SECTION A. INTRODUCTION TO THE ARMY'S LINE OF DUTY SYSTEM

The Army's Line of Duty system stems from one basic premise--every soldier who incurs an injury or disease while conducting himself properly as a member of the Army is entitled to certain benefits. These benefits include pay and allowances, accrual of service and leave, and, in some cases, disability retirement. The Line of Duty system is utilized to determine who is eligible to receive these benefits.

Before looking at a soldier's eligibility for benefits, however, we first need to know when a line of duty determination is required. Basically, the rule is this: a line of duty determination is necessary whenever a soldier incurs an injury or disease which incapacitates him from the performance of duty.

### ANSWER THE FOLLOWING QUESTION:

Would a line of duty determination be required in the following situations?

1. Sergeant Speedy is severely hurt while driving his motorcycle.

Yes \_\_\_\_ No \_\_\_\_

2. Captain Disputacious, JAGC, assaults a nonmilitary friend in a bar following an argument over the UCMJ.

Yes \_\_\_\_ No \_\_\_\_

3. An enlisted soldier contracts hepatitis after donating blood to the local Red Cross unit.

Yes \_\_\_\_ No \_\_\_\_

4. A civilian employee on Post Desolate becomes ill with food poisoning after eating at the post cafeteria.

Yes \_\_\_\_ No \_\_\_\_

5. An officer receives a minor cut while peeling potatoes at home.

Yes \_\_\_\_ No \_\_\_\_

[ANSWERS ON THE FOLLOWING PAGE]

ANSWERS:

1. Yes--the general rule states that a line of duty determination is in order when a soldier incurs an injury or disease severe enough to incapacitate him from the performance of duty. Neither the rank of the individual nor the location where injury/disease was incurred is a factor.
2. No--unless Captain Disputacious himself receives an injury. The Captain's tort or criminal liability is not germane to triggering the line of duty procedures.
3. Yes--disease contracted by soldier.
4. No--employee not a soldier.
5. No--a minor cut would not usually interfere with duty. However, if the cut became infected and the officer later developed blood poisoning requiring hospitalization, then a line of duty determination would be required.

\* \* \* \* \*

It is important to realize that "line of duty" and "conduct" are two different questions, and each line of duty determination must address both issues.

The "line of duty" question turns on an individual's status as a functioning member of the Army. Note that "line of duty" is a term of art involving more than the direct performance of military duties. For example, a person injured while on authorized pass or leave is as much in the line of duty (LD) as is a soldier injured while at his military post.

"Conduct" is a characterization of an individual's behavior based on tort principles.

ANSWER THE FOLLOWING QUESTIONS:

A Reservist, intoxicated and an hour late for his weekend drill, was driving at 100 miles per hour along a highway posted for a maximum safe speed of 40 miles per hour. He was injured when his automobile left the highway and crashed into a ditch.

In light of the general conceptual differences between "conduct" and "line of duty," what facts in this scenario would be pertinent to a determination of the soldier's:

1. Conduct?

- (a) \_\_\_\_\_
- (b) \_\_\_\_\_

2. Line of duty status?

- (a) \_\_\_\_\_
- (b) \_\_\_\_\_

[ANSWERS ON THE FOLLOWING PAGE]

ANSWERS:

1. Conduct
  - (a) intoxication
  - (b) speeding
2. Line of duty status
  - (a) status as a Reservist
  - (b) unauthorized absence

\* \* \* \* \*

As a note of caution, cases involving a member of the Army National Guard often raise difficult issues. If confronted with such a case, reference should be made to Army Regulation 600-8-1, para. 38-4.

There are only three possible line of duty determinations:

1. LD (in line of duty--not due to own misconduct).
2. NLD-NDOM (not in line of duty--not due to own misconduct).
3. NLD-DOM (not in line of duty--due to own misconduct).

These three possible line of duty determinations are set forth below:

1. LD. A finding for an injury or disease  
(1) incurred, contracted or aggravated while the soldier was on active duty, was training in an active or reserve status, was excused from duty or training, or was AWOL (absent without leave) and was mentally unsound at the inception of the absence and (2) not proximately caused by his intentional misconduct or willful negligence.
2. NLD-NDOM. A finding for an injury or disease (1) incurred, contracted or aggravated while the soldier was AWOL, unless he was mentally unsound at the inception of the absence and (2) not proximately caused by his intentional misconduct or willful negligence.
3. NLD-DOM. A finding for an injury or

disease which was proximately caused by the  
intentional or willful negligence of the soldier.



The key terms used above are defined in § C,  
infra.

Note that the evidence bearing on conduct might also be relevant to the line of duty determination. This is because a finding of misconduct (DOM) leads automatically to a finding of NLD. If misconduct is not present (NDOM), then the line of duty status issue must be resolved on other grounds.

ANSWER THE FOLLOWING QUESTION:

Is a determination of "in line of duty--due to own misconduct" (LD-DOM) permissible?

Yes \_\_\_\_ No \_\_\_\_

[ANSWER ON THE FOLLOWING PAGE]

ANSWER: No. There are only three possible line of duty determinations: LD, NLD-NDOM, NLD-DOM.

\* \* \* \* \*

As you would expect, most cases result in a determination of LD. This is the most favorable determination and qualifies the soldier involved for all available benefits.

The other two possible findings, both coming under the NLD subheading, are considered adverse and result in diminished benefits. Turn now to Appendix E at the back of the text and see how a soldier's benefits are affected by a NLD-NDOM finding.

Next, take a look at Appendix F which illustrates what effect a NLD-DOM finding has on these same benefits.

ANSWER THE FOLLOWING QUESTION:

Which of the two NLD findings is more adverse to a soldier in terms of entitlement to benefits?

- a. NLD-NDOM.
- b. NLD-DOM.

[ANSWER ON THE FOLLOWING PAGE]

ANSWER: (b) NLD-DOM

\* \* \* \* \*

Although a loss of benefits may result from an adverse line of duty determination, such determinations are entirely administrative, and not punitive, in nature. Although a soldier may be subject to punishment under the UCMJ for the same act of misconduct, final action taken in a line of duty proceeding has no bearing on any issue in a court-martial or other disciplinary proceeding. Conversely, such a judicial or disciplinary proceeding is not determinative of the line of duty determination.

ANSWER THE FOLLOWING QUESTION:

Line-of-duty (LD) determinations are  
(a) \_\_\_\_\_ in nature, while courts-martial are judicial. In other words, line of duty actions and courts-martial are (b) [related] [independent] proceedings.

[ANSWER ON THE FOLLOWING PAGE]

ANSWER:           (a)                   administrative  
                 (b)                   independent  
                         \* \* \* \* \*

SECTION B. PRESUMPTIONS GOVERNING LINE OF DUTY DETERMINATIONS

Which line of duty determination will be made in a particular case is guided basically by a series of presumptions that have been developed. These presumptions are rebuttable. However, they apply unless evidence is discovered during the course of a line of duty investigation making them inapplicable.

The basic presumption is that an injury or disease is presumed to have been incurred in line of duty and not due to the individual's own misconduct. Note that this presumption covers both the line of duty finding and the characterization of conduct.

Remember, this presumption, as the other presumptions that will be examined, is rebuttable. It may be rebutted by substantial evidence.

ANSWER THE FOLLOWING QUESTION:

A soldier is seriously injured in an automobile accident. There is no evidence to rebut application of the basic presumption. Therefore, the line of duty determination that should apply is:

- a.               LD.
- b.               NLD-NDOM.
- c.               NLD-DOM.

[ANSWER ON THE FOLLOWING PAGE]

ANSWER: (a) LD

\* \* \* \* \*

The presumption as to the line of duty finding can be rebutted by a showing of substantial evidence that the injury or disease was:

1. Incurred or contracted while the individual was neither on active duty nor engaged in authorized training in an active or reserve duty status;
2. Incurred or contracted during a period of unauthorized absence; or
3. Proximately caused by the intentional misconduct or willful negligence of the individual.

The presumption as to the characterization of conduct can be overcome only by a showing of substantial evidence that the injury or disease was proximately caused by the intentional misconduct or willful negligence of the individual.

ANSWER THE FOLLOWING QUESTIONS:

1. A soldier is seriously injured in an automobile accident. There is substantial evidence that the accident resulted from the servicemember's intentional misconduct. The appropriate line of duty determination is:

- a. LD.
- b. NLD-NDOM.
- c. NLD-DOM.

Explain your answer:

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2. A soldier is seriously injured while absent without authority. There is no evidence as to the cause of the injury. The appropriate line of duty determination is:

a. LD.

b. NLD-NDOM.

c. NLD-DOM.

Explain your answer:

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[ANSWERS ON FOLLOWING PAGE]

ANSWERS:

1. (c) NLD-DOM. A showing by substantial evidence of misconduct affects both the line of duty finding and the characterization of conduct.
2. (b) NLD-NDOM. The unauthorized absence, while affecting the line of duty finding, does not overcome the presumption as to the characterization of conduct.

\* \* \* \* \*

A further presumption is that a soldier was in sound physical and mental condition upon entering military service. If this presumption is overcome by a showing of substantial evidence, it is further presumed that any other disability or death that results from a pre-existing injury or disease was caused by service aggravation. Only specific findings of natural progress of the pre-existing injury or disease, based upon well-established medical principles, as distinguished from medical opinion alone, are enough to overcome the presumption of service aggravation.

ANSWER THE FOLLOWING QUESTION:

Private Smith entered active duty suffering from an undiscovered disease. While on active duty he became physically disabled. Due to the exotic nature of the disease, there is no medical authority as to whether the disability is the natural result of the preservice disease. The appropriate determination would be:

- a. LD.
- b. NLD-NDOM.
- c. NLD-DOM.

[ANSWER ON THE FOLLOWING PAGE]

ANSWER: (a) LD. The presumption as to service aggravation can only be overcome based on well-established medical principles.

\* \* \* \* \*

AR 600-8-1 sets out specific rules pertaining to cases of suicide. Basically, death is presumed to be caused by accidental self-destruction, unless there is substantial evidence of a greater weight than supports any other conclusion, that the death was caused by intentional misconduct or willful negligence. The law presumes that a sane person will not commit suicide. Therefore evidence which establishes merely the possibility of suicide will not overcome the general line of duty presumption.

More detailed guidance can be found in para. 41-11 and Rule 10, Appendix F, AR 600-8-1.

ANSWER THE FOLLOWING QUESTIONS :

1. The presumption as to accidental death can only be overcome by a showing of \_\_\_\_\_ evidence of self-destruction.
2. [True-False] The taking of one's life through negligence rather than willful negligence will result in a finding of LD.

[ANSWERS ON THE FOLLOWING PAGE]



ANSWERS:

1. substantial
2. True.

\* \* \* \* \*

It is appropriate to note at this point that a line of duty determination is not made in cases involving death. However, an investigation into the circumstances surrounding the death may be necessary. See para. 41-12, AR 600-8-1.

ANSWER THE FOLLOWING QUESTION:

Which of the following best describes how a case involving a servicemember's death is handled?

- (a) Conduct an investigation and make a determination based upon the circumstances and other available evidence.
- (b) Make a line of duty determination only where the deceased soldier has dependent survivors who may be eligible for VA benefits.
- (c) Investigate the surrounding circumstances when required, but make no determination.
- (d) Conduct no investigation and make no determination.

[ANSWER ON THE FOLLOWING PAGE]

ANSWER: (c)

\* \* \* \* \*

#### SECTION C. DEFINITIONS

In order to support a determination of NLD-DOM, that determination must be supported by substantial evidence and by a greater weight of evidence than supports any different conclusion, that the injury or disease was proximately caused by the servicemember's intentional misconduct or willful negligence. Simple or ordinary negligence or carelessness alone, does not constitute misconduct.

This section amplifies the above statement and defines the emphasized terms of art as they are used in AR 600-8-1. Remember, as explained in § B, certain presumptions apply and provide a starting point for making determinations.

1. Standard of proof. Findings must be supported by substantial evidence and by a greater weight of evidence than supports any different conclusion. The evidence must establish a degree of certainty so that a reasonable person is convinced of the truth or falseness of a fact.

ANSWER THE FOLLOWING QUESTION:

The standard of proof used in line of duty determinations is more analogous to the ("preponderance of the evidence") ("beyond a reasonable doubt") standard.

[ANSWER ON THE FOLLOWING PAGE]

ANSWER: preponderance of the evidence

\* \* \* \* \*

2. Proximate cause refers to the connecting relationship between an act of the servicemember and a disease or injury that results. It is a moving or direct cause, as opposed to merely a contributing cause. In general, it must appear that under the circumstances the soldier could have reasonably expected that the injury or disease might be caused by his conduct.

ANSWER THE FOLLOWING QUESTION:

While absent without authority, speeding and heavily intoxicated, a soldier drove his car into a ditch. Miraculously, he suffered only minor scratches. However, while extricating himself from the ditch, he was robbed and severely beaten by persons unknown. As a result of this beating, he was hospitalized. The appropriate line of duty determination would be:

- a. LD.
- b. NLD-NDOM.
- c. NLD-DOM.

[ANSWER ON THE FOLLOWING PAGE]

ANSWER: (b) NLD-NDOM. If the soldier had been hospitalized as a result of injuries directly resulting from the automobile accident, the appropriate determination would have been NLD-DOM. However, since the subsequent beating and its resulting injuries were not reasonably foreseeable consequences of the wreck, there is no proximate cause link between the speeding and drinking and the incapacitating injuries.

\* \* \* \* \*

3. Intentional misconduct refers to any wrongful or improper conduct which is intended or deliberate. The intent can be expressed or implied. In addition, the misconduct need not constitute an offense under the Uniform Code of Military Justice. In cases involving suspected intentional misconduct, reference should be made to the Appendix F, "Rules Governing Line of Duty and Misconduct Determinations in the Army," AR 600-8-1.

ANSWER THE FOLLOWING QUESTION:

Private Mary Smith is injured as the result of an act of misconduct on her part. The fact that the misconduct is not punishable by court-martial (is) (is not) determinative of the line of duty determination.

[ANSWER ON THE FOLLOWING PAGE]

ANSWER: is not

\* \* \* \* \*

4. Willful negligence is a conscious and intentional omission of the proper degree of care under the circumstances. Willfulness can be expressed or implied. A reckless disregard of the consequences of an act as they may affect life or property is presumed to be willful. Note that simple negligence does not constitute misconduct under the Line of Duty system.

ANSWER THE FOLLOWING QUESTION:

If an injury results from a soldier's driving 5 miles per hour in excess of the posted speed limit, the appropriate line of duty determination, in the absence of any other evidence, would appear to be (a) \_\_\_\_\_. If the injury resulted from the soldier's driving 25 miles per hour over the speed limit on a winding road during a rain storm, a line of duty determination of (b) \_\_\_\_\_ would appear to be appropriate.

[ANSWERS ON THE FOLLOWING PAGE]

ANSWERS:

- (a) LD
- (b) NLD-DOM

\* \* \* \* \*

#### SECTION D. LINE OF DUTY INVESTIGATION PROCEDURES

At this time, it is not necessary to discuss in detail the procedures to be followed in arriving at a line of duty determination. However, some of the basic procedures will be covered.

There are three procedures that may result in a line of duty determination: presumptive determination, informal investigation, and formal investigation. Which of these procedures must be utilized in a given case depends upon the status of the soldier and the circumstances surrounding the injury, disease, or death.

Chapter 40, Army Regulation 600-8-1, contains specific rules as to which procedure is required in a given case. These rules should be consulted when necessary to determine whether the proper procedure was utilized.

Note that a presumptive determination and an informal investigation may result only in a determination of LD.

ANSWER THE FOLLOWING QUESTION:

In order to support a determination of NLD-NDOM or NLDDOM the \_\_\_\_\_ procedure must be utilized.

[ANSWER ON THE FOLLOWING PAGE]

ANSWER: formal investigation

\* \* \* \* \*

As a general rule, line of duty actions originate by the completion of Section I of DA Form 2173, Statement of Medical Examination and Duty Status, by a medical officer at a medical treatment facility. A copy of DA Form 2173 is inclosed at Appendix G.

In cases of a presumptive determination or informal investigation, the injured, diseased, or deceased soldier's unit commander completes Section II of DA Form 2173 and forwards the document to the special court-martial convening authority (SPCMCA) or higher authority for review. When required, the SPCMCA forwards the document to the final approving authority.

In cases involving a formal investigation, the unit commander completes DA Form 2173 and forwards it to the SPCMCA. The SPCMCA appoints an investigating officer who utilizes DD Form 261, Report of Investigation, Line of Duty and Misconduct Status, to complete the investigation. A copy of DD Form 261 is inclosed at Appendix H. The Report of Investigation is then returned to the SPCMCA, who forwards it through the reviewing authority to the final approving authority.

Chapter 40, Army Regulation 600-8-1 contains detailed information concerning the processing of line of duty actions.

COMPLETE THE FOLLOWING:

As a general rule, regardless of the line of duty procedure utilized in a particular case, the procedure will be initiated by a (a) \_\_\_\_\_ and the soldier's (b) \_\_\_\_\_ must complete Section II of DA Form 2173.

[ANSWERS ON THE FOLLOWING PAGE]

ANSWERS:

- (a) medical officer
- (b) unit commander

\* \* \* \* \*

Certain protections are available to the soldier being investigated. The soldier, or his representative, must be informed in writing of the impending investigation and its purpose. The soldier is allowed to submit evidence or sworn or unsworn statements.

Before questioning by an official investigator (civilian or military) the soldier must be advised that he does not have to make any statement that is against his interest that relates to the origin, incurrence or aggravation of the injury or disease. A statement made without such warning will not be used as evidence for an unfavorable line of duty determination.

In injury or disease cases, the final approving authority informs the soldier being investigated of the results. The soldier may appeal within 30 days of receipt of such notice. For appeals not submitted within this time limit, he must "fully explain" the reason for the delay. Additionally, the Secretary of the Army may, at any time, change a line of duty determination.

ANSWER THE FOLLOWING QUESTIONS:

1. [True-False] In a line of duty investigation, the soldier being investigated must be given the opportunity to submit evidence to the investigating officer.
2. [True-False] An adverse line of duty finding may be appealed.

[ANSWERS ON THE FOLLOWING PAGE]



ANSWERS:

1. True.
2. True.

\* \* \* \* \*

SECTION E. ROLE OF THE MILITARY ATTORNEY

The military attorney may become involved in a line of duty case in any of the following situations:

1. Advising the subject soldier of his rights during the conduct of a line of duty investigation and of the benefits at stake in the event of an adverse determination;
2. Advising unit commanders and investigating officers concerning the utilization of a particular procedure and the conduct of informal and formal investigations; and
3. Reviewing completed line of duty actions for legal sufficiency.

It should be noted that Army Regulation 600-8-1, para. 41-5, expressly provides a subject soldier with the right to consult with legal counsel.

\* \* \* \* \*

REVIEW PROBLEM:

At approximately 2300, as a result of a telephone call from the local civilian police, MP's from Fort Hope arrived at the Go-Go Shack located outside Fort Hope's main gate. Upon their arrival, the MP's were directed to an unconscious soldier, subsequently identified as Private Sidney Sufferin, who was lying in the alley behind the Shack. Private Sufferin is presently hospitalized in the Fort Hope Army Hospital recovering from his injuries; he has no recollection of the events leading up to his injuries.

ANSWER THE FOLLOWING QUESTIONS:

1. Assuming no additional evidence is discovered, the appropriate line of duty determination would be (a) \_\_\_\_\_. This

determination results from the (b) \_\_\_\_\_  
that the injuries were incurred (c) \_\_\_\_\_  
and  
(d) \_\_\_\_\_.

2. If Private Sufferin's presence at the Go-Go Shack was in violation of an order of his company commander restricting Private Sufferin to the limits of the company area, the appropriate line of duty determination would be \_\_\_\_\_.

3. If there were sufficient evidence to establish that Private Sufferin's injuries resulted from his drunken attempt to fly from the roof of the Go-Go Shack, the appropriate determination would be \_\_\_\_\_.

4. In order to support a determination of NLD-NDOM or (a) \_\_\_\_\_ in Private Sufferin's case, the (b) \_\_\_\_\_ procedure will have to be utilized.

5. [True-False] Before a determination of NLD-NDOM or NLD-DOM can be approved in Private Sufferin's case, Army Regulation 600-33 requires that the case be reviewed for legal sufficiency.

[ANSWERS ON THE FOLLOWING PAGE]

REVIEW PROBLEM ANSWERS:

1.           (a) LD  
             (b) presumption  
             (c) in line of duty  
             (d) not due to the individual's own  
                    misconduct
2.           NLD-NDOM
3.           NLD-DOM
4.           (a) NLD-DOM  
             (b) formal investigation
5.           True.



APPENDIX D  
AUTHORITY TO COLLECT

		Involuntary Litigation	Voluntary Current pay	Final Pay
Enlisted	Yes <sup>1</sup>	Yes <sup>1</sup>	Yes	Yes
Officer				
accountable officer <sup>2</sup>		Yes	Yes	Yes
personal arms & equipment	Yes	Yes	Yes	Yes
negligent acts		Yes	Yes <sup>3</sup>	Yes
Yes or misconduct				
Civilian	Yes <sup>4</sup>	Yes	Yes	Yes

- Notes:
1. The servicemember must receive at least 1/3 of his pay.
  2. In most circumstances--check 37 U.S.C. § 1007(f).
  3. Using the general rule of set-off.
  4. See, Debt Collection Act, 5 U.S.C. § 5514.

